

REMARKS/ARGUMENTS

Claims 1-3, 20-27 and 33-37 are active. New Claims 33-37 find support in the middle of page 22 of the specification. No new matter has been added.

Rejection—35 U.S.C. 102/103

Claims 1-3 and 20-27 were rejected under 35 U.S.C. 102(b) as being anticipated by de Rooij, EP 0 191 513, or in the alternative, as being unpatentable under 35 U.S.C. 103(a) over de Rooij, EP 0 191 513, in view of Tetsuya et al., JP 60030668.

De Rooij does not anticipate Claims 1-3 and 20-27, because it does not refer to a compositions containing 5-10% of *Kluyveromyces*.

Example 2 in col. 4 (page 3) of de Rooij refers to a food flavor composition produced by heating *Kluyveromyces lactis*, digesting the heated product with an enzyme (papain, lines 54) and fermenting the heated and enzymatically digested product with *Lactobacillus* (lines 61-62). During one step of the preparation of this process a yeast slurry is produced which the Official Action points out contains 0.2 kg yeast and 0.7 kg water (22.2% yeast). However, Claims 1-3 and 20-27 require 5-10% yeast content, and thus fall outside of the intermediate product (yeast slurry) of Example 2.

Moreover, de Rooij does not anticipate new Claims 33-37 which require a nutritive food base (e.g., not water) that does not contain *Kluyveromyces*, and specific food bases, such as fermented milk, fruit juice, soup, or cake/cookie bases. While the yeast extract flavors of de Rooij may be added to foods in an amount ranging between 0.1 and 10% (col. 3, lines 57-58), these protease-treated yeast extracts are distinct from the yeasts of the present invention since protease treatment covalently modifies a yeast extract by cleavage (digestion) of yeast proteins.

Tetsuya refers to food products produced using *Kluyveromyces lactis*, but indicates that yeast is removed from the food product: "the yeasts and lactic acid bacteria are separated to give a fermented solution. It is optionally concentrated, dried and/or adjusted to give a fermented drink". Thus, Tetsuya does not disclose or suggest (and, in fact, teaches away from) the food products of the present invention which are required to have at least 5% yeast content.

The Applicants respectfully request that these grounds of rejection be withdrawn, since the cited prior art does not disclose compositions containing 5-10% *Kluyveromyces*, or food products containing at least 5% *Kluyveromyces*.

CONCLUSION

In view of the above amendments and remarks, the Applicants respectfully submit that this application is now in condition for allowance. Early notification to that effect is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/03)



Thomas M. Cunningham, Ph.D
Registration No. 45,394